

1 **DUI TESTING AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ryan D. Wilcox**

5 Senate Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **Committee Note:**

9 The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

10 Legislative Vote: 9 voting for 0 voting against 9 absent

11 **General Description:**

12 This bill amends provisions related to testing of bodily fluids for purposes of an
13 investigation of driving under the influence.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ requires the Department of Health and Human Services to:

17 • screen blood and urine samples for both drugs and alcohol;

18 • provide the testing in a timely manner; and

19 • provide test results through a secure medium to the Driver License Division and

20 relevant law enforcement agencies;

21 ▶ clarifies that the Department of Health and Human Services may disclose the results
22 of a drug and alcohol screening as part of the investigation for driving under the
23 influence;

24 ▶ amends a provision allowing the use of a blood and urine test in certain
25 administrative proceedings;

26 ▶ enacts provisions regarding permissible uses of a blood and urine test by the Driver
27 License Division;



- 28 ▶ requires the Department of Public Safety to make rules to establish standards for
- 29 proper usage and administration of oral fluid and portable breath tests as part of a
- 30 field sobriety test;
- 31 ▶ requires law enforcement agencies to provide training on the use of oral fluid and
- 32 portable breath tests as part of a field sobriety test;
- 33 ▶ allows evidence obtained through oral fluid and portable breath tests to support a
- 34 finding of probable cause that a person is guilty of driving under the influence; and
- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **26B-1-216**, as renumbered and amended by Laws of Utah 2023, Chapter 305
- 43 **26B-8-406**, as renumbered and amended by Laws of Utah 2023, Chapter 306
- 44 **26B-8-407**, as renumbered and amended by Laws of Utah 2023, Chapter 306
- 45 **26B-8-408**, as renumbered and amended by Laws of Utah 2023, Chapter 306
- 46 **41-6a-515.6**, as enacted by Laws of Utah 2017, Chapter 283
- 47 **53-3-104**, as last amended by Laws of Utah 2021, Chapter 284

48 ENACTS:

- 49 **53-3-111**, Utah Code Annotated 1953
- 50 **53-25-102**, Utah Code Annotated 1953



52 *Be it enacted by the Legislature of the state of Utah:*

53 Section 1. Section **26B-1-216** is amended to read:

54 **26B-1-216. Powers and duties of the department -- Quality and design.**

55 The department shall:

- 56 (1) monitor and evaluate the quality of services provided by the department including:
- 57 (a) in accordance with Part 5, Fatality Review, monitoring, reviewing, and making
- 58 recommendations relating to a fatality review;

59 (b) overseeing the duties of the child protection ombudsman appointed under Section
60 80-2-1104; and

61 (c) conducting internal evaluations of the quality of services provided by the
62 department and service providers contracted with the department;

63 (2) conduct investigations described in Section 80-2-703; [~~and~~]

64 (3) develop an integrated human services system and implement a system of care by:

65 (a) designing and implementing a comprehensive continuum of services for individuals
66 who receive services from the department or a service provider contracted with the department;

67 (b) establishing and maintaining department contracts with public and private service
68 providers;

69 (c) establishing standards for the use of service providers who contract with the
70 department;

71 (d) coordinating a service provider network to be used within the department to ensure
72 individuals receive the appropriate type of services;

73 (e) centralizing the department's administrative operations; and

74 (f) integrating, analyzing, and applying department-wide data and research to monitor
75 the quality, effectiveness, and outcomes of services provided by the department[.]; and

76 (4) (a) coordinate with the Driver License Division, the Department of Public Safety,
77 and any other law enforcement agency to test blood and urine samples submitted to the
78 department as part of an investigation for driving under the influence, including:

79 (i) testing the blood or urine sample to screen for:

80 (A) alcohol; and

81 (B) any other drug or substance that the department determines could impair an
82 individual; and

83 (ii) providing the results of the test described in Subsection (4)(a)(i) through a secure
84 medium and in a timely manner; and

85 (b) ensure that testing described in Subsection (4)(a) is performed in accordance with
86 standards and procedures established and recommended by the National Highway Traffic
87 Safety Administration and National Transportation Safety Board.

88 Section 2. Section **26B-8-406** is amended to read:

89 **26B-8-406. Disclosure of health data -- Limitations.**

90 The department may not make a disclosure of any identifiable health data unless:

91 (1) one of the following persons has consented to the disclosure:

92 (a) the individual;

93 (b) the next-of-kin if the individual is deceased;

94 (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or

95 (d) a person holding a power of attorney covering such matters on behalf of the

96 individual;

97 (2) the disclosure is to a governmental entity in this or another state or the federal

98 government, provided that:

99 (a) the data will be used for a purpose for which they were collected by the department;

100 and

101 (b) the recipient enters into a written agreement satisfactory to the department agreeing

102 to protect such data in accordance with the requirements of this part and department rule and

103 not permit further disclosure without prior approval of the department;

104 (3) the disclosure is to an individual or organization, for a specified period, solely for

105 bona fide research and statistical purposes, determined in accordance with department rules,

106 and the department determines that the data are required for the research and statistical

107 purposes proposed and the requesting individual or organization enters into a written

108 agreement satisfactory to the department to protect the data in accordance with this part and

109 department rule and not permit further disclosure without prior approval of the department;

110 (4) the disclosure is to a governmental entity for the purpose of conducting an audit,

111 evaluation, or investigation of the department and such governmental entity agrees not to use

112 those data for making any determination affecting the rights, benefits, or entitlements of any

113 individual to whom the health data relates;

114 (5) the disclosure is of specific medical or epidemiological information to authorized

115 personnel within the department, local health departments, public health authorities, official

116 health agencies in other states, the United States Public Health Service, the Centers for Disease

117 Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary

118 to continue patient services or to undertake public health efforts to control communicable,

119 infectious, acute, chronic, or any other disease or health hazard that the department considers to

120 be dangerous or important or that may affect the public health;

121 (6) (a) the disclosure is of specific medical or epidemiological information to a "health
 122 care provider" as defined in Section 78B-3-403, health care personnel, or public health
 123 personnel who has a legitimate need to have access to the information in order to assist the
 124 patient or to protect the health of others closely associated with the patient; and

125 (b) this Subsection (6) does not create a duty to warn third parties;

126 (7) the disclosure is necessary to obtain payment from an insurer or other third-party
 127 payor in order for the department to obtain payment or to coordinate benefits for a patient; ~~or~~

128 (8) the disclosure is to the subject of the identifiable health data~~[-];~~ or

129 (9) the disclosure is limited to the results of a blood or urine test and the disclosure is
 130 to the Driver License Division or relevant law enforcement agency as part of an investigation
 131 of driving under the influence and pursuant to Subsection 26B-1-216(4).

132 Section 3. Section 26B-8-407 is amended to read:

133 **26B-8-407. Disclosure of health data -- Discretion of department -- Exception.**

134 (1) Any disclosure provided for in Section 26B-8-406 shall be made at the discretion of
 135 the department.

136 (2) Notwithstanding Subsection (1), the disclosure provided for in:

137 (a) Subsection 26B-8-406(4) shall be made when the requirements of that paragraph
 138 are met[-]; and

139 (b) Subsection 26B-8-406(9) is not discretionary.

140 Section 4. Section 26B-8-408 is amended to read:

141 **26B-8-408. Health data not subject to subpoena or compulsory process --**
 142 **Exception.**

143 (1) ~~Identifiable~~ Except as provided in Subsection (2), identifiable health data
 144 obtained in the course of activities undertaken or supported under this part may not be subject
 145 to discovery, subpoena, or similar compulsory process in any civil or criminal, judicial,
 146 administrative, or legislative proceeding, nor shall any individual or organization with lawful
 147 access to identifiable health data under the provisions of this part be compelled to testify with
 148 regard to such health data, except that data pertaining to a party in litigation may be subject to
 149 subpoena or similar compulsory process in an action brought by or on behalf of such individual
 150 to enforce any liability arising under this part.

151 (2) The Driver License Division may use an individual's identifiable health data from

152 blood or urine test provided to the Driver License Division under Section 26B-1-216 in an
153 administrative hearing or agency review involving the individual who is the subject of the
154 blood or urine test as described in Section 53-3-111.

155 Section 5. Section 41-6a-515.6 is amended to read:

156 **41-6a-515.6. Field sobriety test training.**

157 Each law enforcement agency shall ensure that each peace officer receives training on
158 the current standard field sobriety testing guidelines established by the National Highway
159 Traffic Safety Administration and in accordance with Section 53-25-102.

160 Section 6. Section 53-3-104 is amended to read:

161 **53-3-104. Division duties.**

162 The division shall:

163 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
164 make rules:

165 (a) for examining applicants for a license, as necessary for the safety and welfare of the
166 traveling public;

167 (b) for acceptable documentation of an applicant's identity, Social Security number,
168 Utah resident status, Utah residence address, proof of legal presence, proof of citizenship in the
169 United States, honorable or general discharge from the United States military, and other proof
170 or documentation required under this chapter;

171 (c) for acceptable documentation to verify that an individual is homeless as verified by
172 the Department of Workforce Services, for purposes of residency, address verification, and
173 obtaining a fee waiver;

174 (d) regarding the restrictions to be imposed on an individual driving a motor vehicle
175 with a temporary learner permit or learner permit;

176 (e) for exemptions from licensing requirements as authorized in this chapter;

177 (f) establishing procedures for the storage and maintenance of applicant information
178 provided in accordance with Section 53-3-205, 53-3-410, or 53-3-804; and

179 (g) to provide educational information to each applicant for a license, which
180 information shall be based on data provided by the Division of Air Quality, including:

181 (i) ways drivers can improve air quality; and

182 (ii) the harmful effects of vehicle emissions;

- 183 (2) examine each applicant according to the class of license applied for;
184 (3) license motor vehicle drivers;
185 (4) file every application for a license received by the division and shall maintain
186 indices containing:
187 (a) all applications denied and the reason each was denied;
188 (b) all applications granted; and
189 (c) the name of every licensee whose license has been suspended, disqualified, or
190 revoked by the division and the reasons for the action;
191 (5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with
192 this chapter;
193 (6) file all accident reports and abstracts of court records of convictions received by the
194 division under state law;
195 (7) maintain a record of each licensee showing the licensee's convictions and the traffic
196 accidents in which the licensee has been involved where a conviction has resulted;
197 (8) consider the record of a licensee upon an application for renewal of a license and at
198 other appropriate times;
199 (9) search the license files, compile, and furnish a report on the driving record of any
200 individual licensed in the state in accordance with Section 53-3-109;
201 (10) develop and implement a record system as required by Section 41-6a-604;
202 (11) in accordance with Section 53G-10-507, establish:
203 (a) procedures and standards to certify teachers of driver education classes to
204 administer knowledge and skills tests;
205 (b) minimal standards for the tests; and
206 (c) procedures to enable school districts to administer or process any tests for students
207 to receive a class D operator's license;
208 (12) in accordance with Section 53-3-510, establish:
209 (a) procedures and standards to certify licensed instructors of commercial driver
210 training school courses to administer the skills test;
211 (b) minimal standards for the test; and
212 (c) procedures to enable licensed commercial driver training schools to administer or
213 process skills tests for students to receive a class D operator's license;

214 (13) provide administrative support to the Driver License Medical Advisory Board
215 created in Section 53-3-303;

216 (14) upon request by the lieutenant governor, provide the lieutenant governor with a
217 digital copy of the driver license or identification card signature of an individual who is an
218 applicant for voter registration under Section 20A-2-206; ~~and~~

219 (15) in accordance with Section 53-3-407.1, establish:

220 (a) procedures and standards to license a commercial driver license third party tester or
221 commercial driver license third party examiner to administer the commercial driver license
222 skills tests;

223 (b) minimum standards for the commercial driver license skills test; and

224 (c) procedures to enable a licensed commercial driver license third party tester or
225 commercial driver license third party examiner to administer a commercial driver license skills
226 test for an applicant to receive a commercial driver license~~[-]; and~~

227 (16) receive from the Department of Health and Human Services a result from a blood
228 or urine test of an individual arrested for driving under the influence and use the blood or urine
229 test result in an administrative hearing or agency review involving the individual who is the
230 subject of the blood or urine test as described in Section 53-3-111.

231 Section 7. Section 53-3-111 is enacted to read:

232 **53-3-111. DUI blood and urine tests -- Permissible uses and restrictions.**

233 (1) The division shall receive a result of a blood and urine test of an individual arrested
234 for driving under the influence from the Department of Health and Human Services.

235 (2) (a) The division may only use an individual's personally identifiable health data
236 from a blood and urine test in connection with:

237 (i) an administrative hearing for driving under the influence involving that individual
238 as provided in Section 53-3-418, Subsection 53-3-223(6)(c), or Subsection 53-3-231(6)(c); or

239 (ii) in accordance Title 63G, Chapter 4, Part 3, Agency Review, an agency review of
240 the administrative hearing described in Subsection (2)(a)(i).

241 (b) (i) The division shall aggregate and anonymize data from a blood and urine test.

242 (ii) The division may only use the anonymized and aggregated data from blood and
243 urine tests:

244 (A) to create a report the division is required to submit to the Legislature; or

245 (B) to create a statistical report to provide data to a law enforcement database.
246 (3) The division shall securely retain each blood and urine test as a private record as
247 provided in Title 63G, Chapter 2, Government Records Access and Management Act.
248 (4) The division may only provide the information from a blood and urine test received
249 under this section:
250 (a) to the individual who is the subject of the blood and urine test;
251 (b) if the individual who is the subject of the blood and urine test consents, to the
252 individual's attorney in connection with an administrative proceeding as provided in Section
253 53-3-418, Subsections 53-3-223(6)(c), or Subsection 53-3-231(6)(c); or
254 (c) as otherwise required by law.
255 Section 8. Section **53-25-102** is enacted to read:
256 **53-25-102. Standards for oral fluid and portable breath tests -- Rulemaking.**
257 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
258 department shall make rules to establish standards for the proper use of oral fluid and portable
259 breath testing as part of a field sobriety test.
260 (2) Each law enforcement agency shall provide training to ensure that:
261 (a) oral fluid and portable breath testing techniques and practices comply with the rules
262 described in Subsection (1); and
263 (b) oral fluid and portable breath testing equipment is used in a manner consistent with
264 manufacturer and industry standards.
265 (3) A law enforcement agency may use evidence obtained through oral fluid or portable
266 breath testing as part of a field sobriety test to support a finding of probable cause that a person
267 is guilty of driving under the influence.
268 Section 9. **Effective date.**
269 This bill takes effect on May 1, 2024.